

Message Text

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ORIGIN L-03

INFO OCT-01 ARA-16 EUR-25 NEA-14 IO-14 ISO-00 AF-10 EA-11

RSC-01 FRB-03 OMB-01 TAR-02 SP-03 SWF-02 AGR-20

AID-20 CIAE-00 COME-00 EB-11 INR-11 LAB-06 NSAE-00

OIC-04 SIL-01 STR-08 TRSE-00 CIEP-03 CEA-02 SSO-00

NSCE-00 SS-20 NSC-07 INRE-00 FEA-02 SCI-06 EPA-04

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FM SECSTATE WASHDC

TO USMISSION GENEVA IMMEDIATE

INFO USMISSION USUN NEW YORK

USMISSION OECD PARIS

AMEMBASSY MEXICO

AMEMBASSY NEW DELHI

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E.O. 11652: N/A

TAGS: EGEN, UNCTAD

SUBJECT: CERDS; PERMANENT SOVEREIGNTY AND INVESTMENT ISSUES

REFS: (A) GENEVA 5598; (B) GENEVA 5610.

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FOR GENEVA PASS SCHWEBEL

1. WE APPRECIATE VIGOROUS EFFORTS OF USDEL TO PROTECT U.S. POSITIONS, AND AGREE WITH GENERAL APPROACH PARTICULARLY GIVING PRIORITY TO MAINTAINING GROUP B SOLIDARITY ON THESE ISSUES. WOULD APPRECIATE YOUR ASSESSMENT WHERE A B GROUP MEMBER SUCH AS FRANCE DECIDES TO HOLD A FIRM LINE ON AN ISSUE WHETHER IT WILL FOLLOW UP AT UNGA WITH NEGATIVE VOTE OR ABSTENTION ON THE CHARTER AS A WHOLE.
2. WITH RESPECT TO VARIATIONS ON THE BRILLANTES TEXT, WE CONCUR IN REVISED VERSIONS FIRST SENTENCE (PARA. 1, REF. A), PARAGRAPH C ON MULTINATIONAL CORPORATIONS (PARA. 1, REF. A), AND PARAGRAPH E ON DISPUTE SETTLEMENT (PARA. 3, REF. B). WE MUCH PREFER ORIGINAL VERSION PARA. A OF BRILLANTES TEXT TO CHADHA FORMULA (PARA. 1(C), REF. A), BUT COULD ACCEPT LATTER WITH DELETION "AND CONTROL" IF OTHER ISSUES RESOLVED SATISFACTORY.
3. OUR MAIN CONCERN WITH RESPECT TO BRILLANTES TEXT IS TO AVOID ANY EROSION OF U.S. INTERNATIONAL LAW POSITION CONCERNING COMPENSATION FOR EXPROPRIATED PROPERTY. THIS ISSUE IS AFFECTED BY BOTH PARAGRAPH D AND LAST SENTENCE OF THE BRILLANTES TEXT AND OUR APPROACH TO ONE MUST TAKE INTO ACCOUNT TEXT OF THE OTHER. CONSIDERING UNCERTAINTIES OF INTERNATIONAL LAW IN THIS AREA OUR FIRST PREFERENCE WOULD BE TO MAINTAIN STATEMENT THAT "JUST COMPENSATION SHALL BE PAID" IN PARAGRAPH D. IF YOU COULD ACHIEVE DELETION OF PHRASE "IN LIGHT OF ALL RELEVANT CIRCUMSTANCES" WE WOULD NOT NEED TO INSIST UPON ANY CONCLUDING SENTENCE AND COULD AGREE SIMPLY TO DELETE THE LAST SENTENCE ACTUALLY PROPOSED BY BRILLANTES AT MEXICO. ON THE OTHER HAND, WE ARE PREPARED TO AUTHORIZE YOU TO ACCEPT "JUST AND EQUITABLE" OR "FAIR" OR "FAIR AND EQUITABLE" IN LIEU OF "JUST" IN PARAGRAPH D IF "IN LIGHT OF ALL RELEVANT CIRCUMSTANCES" DELETED AND PROVIDED THAT WE ACHIEVE CLEAR REFERENCE TO INTERNATIONAL OBLIGATIONS (OR PREFERABLY INTERNATIONAL LAW) IN LAST SENTENCE. WE WOULD PREFER ORIGINAL FORMULA "INTERNATIONAL OBLIGATIONS" BUT WOULD CONSIDER GOING ALONG WITH THE FORMULATION UNDER EXAMINATION IN DRAFTING GROUP AS REPORTED AT THE END OF LIMITED OFFICIAL USE

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PARAGRAPH 1 (G) OF REFTTEL A. WE ARE NOT AT ALL KEEN ON FORMULA MENTIONING COERCION (PARAGRAPH 4(D) OF REFTTEL B) AND WOULD WISH TO CONSIDER FURTHER BEFORE ASKING YOU TO ACCEPT IT.
4. YOU SHOULD CONTINUE TO EMPHASIZE THAT BRILLANTES FORMULA WAS COMPROMISE TEXT INVOLVING SIGNIFICANT U.S. CONCESSIONS. WE WISH TO BE SURE THAT ADDITIONAL U.S.

CONCESSIONS ARE RECIPROCATED AND THAT FINAL RESULT IS
ACCEPTABLE. KISSINGER

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